

PRELIMINARY FINDING AND DECISION

Proposed State Land Sale – Hawkins Island Subdivision ADL 230390

AS 38.05.035(e)

OTHER RELATED ACTIONS

Proposed Mineral Closing Order

AS 38.05.185

Proposed Action

The Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW) proposes to survey and offer for sale parcels of state land for private ownership. The proposed Hawkins Island Alaska Subdivision project area consists of 379.13 acres located within the Copper River Meridian Township 15 South Range 03 West, Section 8: Government Lot 4; Section 17: Government Lots 1, 3, 4 and 7; and Section 20: Lot 1. The proposed subdivision may be comprised of up to 30 parcels varying in size between 2 and 20 acres. Portions of the proposed project area are to remain in public ownership, please see Attachment C for approximate locations; the actual size and location of lands that will be retained in State ownership will not be decided until the design and survey phase of the subdivision process. Parcels will be offered for sale through a public sealed bid auction. The purpose of the sale is to provide land for settlement in the Cordova area and eastern Prince William Sound. The sale of these parcels will meet the State's goals of providing quality, accessible State land for private ownership and will also generate revenue.

The public is invited to comment on this Preliminary Finding and Decision. Please see the Public Notice section (Attachment A) for details on how to submit comments, including dates and conditions.

Attachment A is the public notice which will be published in the legal notices of statewide and local newspapers advertising the public comment period in accordance with AS 38.05.945.

Attachment B is a vicinity map for the proposed subdivision project.

Attachment C is a map of the approximate location of lands to be retained by the State.

Authority

The applicable statutes include, but are not limited to, Alaska Statutes: **38.05.035** – Powers and Duties of the Director; **38.05.045** – General Provisions for the sale of Land; **38.05.055** – Procedures for Sale by Auction; **38.05.060** Rejection of Bids; **38.05.940** – Land Purchase Price Discount for Veterans

Administrative Record

The administrative record for the proposed actions consists of the Hawkins Island project file (ADL 230390); incorporated by reference is the Prince William Sound Area Plan adopted June 1988, any

updates or amendments and the associated land classification file CL SC-88-004. The record also encompasses the DNR land records information.

Scope of the Decision

The Division proposes to survey and offer for sale State land, referred to as Hawkins Island Alaska Subdivision, through a public, sealed bid auction.

The Division proposes that the project area include up to 30 lots of varying size between 2 and 20 acres.

Upon approval of this land disposal a separate concurrent action will close 379.13 acres within the project area to new mineral entry prior to offering in accordance with AS 38.05.185.

Description

Geographic Location: Hawkins Island is a large island, more than 45,000 acres in size, located in eastern Prince William Sound. The Island lies due west of the town of Cordova and is the dominant feature visible from that town. The 3,865 acres of state settlement land that will include the proposed subdivision and land sale is located on the northeastern corner of Hawkins Island between Deep Bay and Shipyard Bay.

Legal Description: Copper River Meridian Township 15 South Range 03 West, Section 8: Government Lot 4; Section 17: Government Lots 1, 3, 4, and 7; and Section 20: Lot 1.

Municipality: Unorganized Borough. Project area is outside the City of Cordova boundary.

Alaska Coastal District: None. Statewide ACMP; Single agency review to be conducted by DMLW.

Native Regional and Village Corporations: Chugach Alaska Corporation, Eyak Corporation and Chugachamiut.

Flood Zone: No FEMA maps or other flood map information was found to be available for Hawkins Island.

USGS Map Coverage: Cordova C-5 SW, Alaska

Topography: The property has very little flat land and primarily consists of large hills that rise from sea level. The slope on these hills varies from a grade of 10 degrees to 70 degrees. There are several beaches and small bluffs that front the ocean.

Soils: The soils in the area are shallow organic layer followed by slate mineral and bedrock, as is typical of Prince William Sound. The area contains many natural drainage features because of the hills.

Vegetation: The vegetation is typical of Prince William Sound. Near the beach and in some disturbed soils around muskeg there are alders that grow outwards because of snow load. Behind the alders there is a thick, mature forest of western hemlock, white spruce and Sitka spruce. These trees range in size from a few inches in diameter to several feet, with heights upwards of 100ft.

Title

Acquisition Authority: National Forest Community Grant 62. Patent Number 50-89-0057

Title Status: The State received Patent under the National Forest Community Grant on 11/17/1988. Patent Number 50-89-0057. Title Report FY-0800102/RPT 2. Current as of 6/19/08.

Other Interest

Federal retained interest:

Excepting and reserving to the United States a right-of-way thereon for ditches and canals constructed by the authority of the United States Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

State retained interest:

The State retains ownership of leasable minerals including oil, gas, coal, ore, minerals, fissionable material, geothermal resources, and fossils that may be in or upon the land that it sells (AS 38.05.125). The State and its successors reserve the right to enter onto the land for the purposes of exploring for, developing and producing these reserved mineral resources. Under common law, this access reservation is superior to any and all surface uses. The State may also lease them to mineral developers or allow mining locations to be staked. However, Alaska law also provides that the surface owner will be compensated for damages resulting from mineral exploration and development (AS 38.05.125).

Background

Chronological Background and History

- 1985 – ADL 221123 - Trespass case file initiated for adding a ramp to existing oyster floats.
– Water Rights – LAS-1697
- 1988 - State received Patent under NFCG-62. Patent Number 50-89-0057
 - ADL 224651 - Preference Right Conveyed 1 acre.
 - ADL 224652 – Preference Right conveyed 1 acre.
 - ADL 224655 – Preference Right conveyed 2 acres.
 - ADL 224653 – Preference Right conveyed 2 acres.
 - ADL 224654 – Preference Right conveyed 1 acre.
- 1990 - MCO 599 – Mineral closing order of ASLS 900292 Tract C, D, E and F.
- 2003 - ADL 228662 – Aquatic Farm permit issued.
- 2008 - ADL 230390 – Land Sales Project initiated.

Planning and Classification

DNR Land Use Plan: Prince William Sound Area Plan, June 1988. Unit 26A – Shipyard Bay, which includes parts of Deepwater Bay. “The plan proposes that approximately 500 acres will be

offered for sale near Shipyard Bay.” (PWSAP, p 3-225). “During subdivision design, areas will be reserved to ensure continued public access to parts of the area.” (PWSAP, p 3-226).

Land Classification: Settlement- land classification file CL SC-88-004

Mineral Order: There is currently a mineral closing order (MCO 599) closing 8 acres of the project area to mineral entry. The Division will recommend closing the entire project area to mineral entry in accordance with AS 38.05.185 for a land disposal. Prince William Sound Area Plan management intent for Management Unit 26 “Hawkins Island” states that “The Shipyard Bay land offering will be closed before disposal.” The State generally closes areas scheduled for disposal to mineral entry prior to sale to minimize potential conflict between surface and subsurface users. However, the project area may still be subject to potential oil and gas leasing and exploration.

Local Planning: Hawkins Island is outside of the Cordova planning area. There are no other known plans that are applicable to the project area on Hawkins Island.

Traditional Use Finding (38.05.830)

The Prince William Sound Area Plan states that some areas of Hawkins Island are popular for deer hunting and that the island’s surrounding tidelands are used for clam digging and bird hunting. Anecdotal information gathered from conversations with Cordova area residents, and comments made by the Alaska Department of Fish and Game corroborate this information for the project area.

While the intent of the subdivision is to create private land ownership opportunities in the area by disposing of State lands it is not the intent of the subdivision design to impede traditional uses of hunting, gathering and general enjoyment of the remaining, adjacent public lands. This is in keeping with the recommendations of the Prince William Sound Area Plan.

The entire extent of traditional uses, potential impacts on those uses and how mitigation efforts on these impacts will be implemented is not entirely known at this time and will be addressed at the time of the Final Finding and Decision following public review and public comment.

Access

Primary access: Access to this project area is currently from Deep Bay, Shipyard Bay or Orca Inlet.

Access to individual lots will be provided via the existing public water bodies of Deep Bay, Shipyard Bay, or Orca Inlet and/or by platted rights-of-way, whose location and size shall be determined in the final subdivision design.

A staging area may be developed for the future lot owners in this area. The size and location of a staging area are as yet undetermined. While a staging area may be part of this project the location and size of such an area cannot be determined until the subdivision design takes place.

Access to public lands adjoining the project area will continue to be from the public water bodies of Deep Bay, Shipyard Bay, and Orca Inlet. Additional public access may be provided by platted rights-of-way, whose location and size shall be determined in the final subdivision design.

Information received during public notice may help determine the final subdivision design, including the location of potential easements for public access, and in identifying areas of concern that may be in the best interest of the state to be retained in public ownership.

Waters Determined Public or Navigable: The project area is located on Hawkins Island, which is located in Prince William Sound, a navigable water body. The project area does not contain, nor cross, any significantly sized streams, lakes or other water bodies.

Easements and Setbacks: For purposes of reserving access Easements To and Along Navigable and Public Water, per AS 38.05.127 a public access easement extending 50' feet upland from the mean high tide (MHT) line, will be reserved along public water bodies. This To and Along easement, created as part of this subdivision project area, will be established only where lots created by this subdivision process have ocean frontage.

Three section line easements currently exist within the project area. These easements are 100' in total width having 50' on each side of the section line. These easements will be incorporated into the final design of the subdivision if feasible, or vacated if determined necessary in the final subdivision design. If the section line easements are vacated, equal or better access to both the public lands and individual lots will be provided for.

A building Setback of at least 100' will be imposed in the final subdivision design extending upland from the mean high tide (MHT) line of all water frontage lots. This building setback will be in addition to the 50' To and Along easement that will be platted on ocean fronting lots.

Reservation of Mineral Estate

The State retains ownership of all oil, gas, coal, ore, minerals, fissionable material, geothermal resources, and fossils that may be in or upon the land that it sells (AS 38.05.125).

Mineral closing orders, where they have been established, close the area to exploration and development of locatable minerals such as gold, copper, platinum, etc. Mineral closing orders do not apply to leasable minerals, such as oil and gas, coal, shallow gas, or exploration licensing, nor do they preclude reasonable surface access to these resources.

In accordance with section 6(i) of the Alaska Statehood Act and AS 38.05.125, the State, in this decision, reserves unto itself the mineral estate, including oil and gas, and the rights expressed in the reservation clause of the statute, that being the right to reasonable access to the surface for purposes of exploring for, developing and producing the reserved mineral resources. Exploration and development, if any, which could occur, would be consistent with AS 38.05.130 and other applicable statutes and regulations.

Environmental Risk Assessment

A field inspection revealed no environmental hazards within the project area. The Department recognizes there are environmental risks associated with the potential development when vacant public land is transferred into private ownership. This is a minimal risk and does not outweigh the need to offer quality and accessible land to the public.

Survey and Appraisal

Survey: Depending on agency and public feedback, physical conditions of the land, and access issues, the Division proposes to survey up to 30 parcels varying in size between 2 and 20 acres. The cost for surveying will be paid for from funds allotted for new settlement area development.

Appraisal: Parcels will have a current, fair market value appraisal completed prior to sale. Parcels will be offered for sale through a competitive, sealed bid auction where the minimum bid prices will be set at no less than the appraised fair market value. The State may however find it necessary to assess additional costs to certain project areas if the cost of local access development exceeds that of the fair market value of the parcels to benefit from that access (AS 38.04.050).

Agency Comments

Agency review was conducted from May 6, 2008 through June 6, 2008. Comments received during agency review have been considered and addressed below. Additional comments received during the Public Notice period will be considered and addressed in the Final Finding and Decision. Comments received during agency review have been considered and addressed as follows:

Alaska Department of Fish and Game:

(Summary of ADF&G comments) ADF&G expressed concern over the following issues:

- Request that ADNDR retain a 200ft wide riparian buffer in state ownership along Deep Creek, AWC#228-10-18660 and any other anadromous fish bearing streams; for fish and wildlife habitat protection, migration corridors, public recreation and to fulfill public easement needs.
- ADNDR should retain access corridors through subdivision areas to state and federal public lands inland from the coast and subdivision developments.
- Subdivision layout should be done in such a way as to maintain separation between the subdivision and hunting areas.
- Public anchorages, access points, tidal harvest areas, recreation areas and beach areas should be documented and considered in subdivision planning. Public access to and use of these areas should be maintained in subdivision development. Private waterfront lots should not be situated upland of these areas where private waterfront facilities may interfere with public access and uses of these areas.
- ADNDR should retain 200ft wide shoreline buffer along tidelands in state ownership for fish and wildlife habitat protection, migration corridor, public recreation and to fulfill public access easement needs. This would also act to screen developments from and avoid disturbance of marine bird and mammal species and recreational users.

DNR LSCAS Response: The Department of Natural Resources intends to develop the subdivision on Hawkins Island in a manner that attempts to minimize undesired impacts on the areas scenic, recreational, ecologic and biologic values while still providing for settlement opportunities. Building setbacks of at least 100ft will be reserved on water fronting lots within the subdivision. For purposes of reserving access Easements To and Along Navigable and Public Water, per AS 38.05.127 a public access easement extending 50' feet upland from the mean high tide (MHT) line, will be reserved along water bodies determined to be navigable and/or public. This To and Along easement, created as part of this subdivision project area, will be established only where lots created by this subdivision process have ocean frontage. Access to public lands adjoining the project area will continue to be from the public water bodies of Deep Bay, Shipyard Bay, or Orca Inlet. Additional access may be provided by platted rights-of-way, whose location shall be determined in the final subdivision design.

The anadromous stream Deep Creek, AWC#228-10-18660, is not within the project area.

Alaska Department of Natural Resources, Division of Mining, Land and Water, Mining Section:
(Summary of comment)

There are two mineral showings in the area, within T15S, R03W, section 15 (Alaska Resource Data File CV044) and T15S, R03W, section 19 (Alaska Resource Data File CV047). The Cordova Copper Co; Fleming Spit prospects found in the eastern half of section 15 consists of at least 12 adits developed from 1905-1909, but no known copper-gold production. These prospects are about 2 miles N-NE of the city of Cordova. The Hawkins Island #1 copper occurrence in section 19 is inconsequential and consists of Orca Group slate with 15 percent pyrite.

The proposed subdivisions will not significantly impact the mineral potential of the most significant local mineral occurrences at Fleming Spit.

DNR LSCAS Response: Land Sales will continue to work closely with the Mining Section of DNR.

Office of History and Archaeology
(Summary of comment)

According to the Alaska Heritage Resources Survey records, there are four recorded archaeological sites within the proposed Hawkins Island Subdivision indicating prehistoric and historic use of this area. While an archaeological survey has not occurred, the area is considered to be an archaeological sensitive area, especially for (but not limited to) coastal and intertidal sites.

DNR LSCAS Response:

An Archaeological Survey will be conducted prior to the design of the subdivision and subsequently the sale of individual lots. The findings of the Archaeological Survey will influence the final design of the subdivision and the appropriate steps will be taken to mitigate any adverse affects the subdivision may have on archaeological sites.

Several agencies did not comment during the agency review process; however these agencies will have the opportunity to comment during the Public Notice period.

Alternatives and Discussion

The following alternatives were considered:

Alternative 1: (Preferred Alternative) Offer the project area as proposed, consisting of up to 30 parcels varying in size between 2 and 20 acres.

Alternative 2: Offer the project area as several large parcels ranging between 20 and 40 acres.

Alternative 3: (Status Quo) Do not offer this proposed project area.

Discussion


The State has a limited amount of State land that is classified for Settlement (11 AC 55.277). The Division is given the responsibility to transfer land from the State to the private sector. When the opportunity presents itself the Division should find ways in which it can offer this land in a responsible way while maximizing the amount of Alaskan residents it can benefit through land sales. This project area is located in eastern Prince William Sound near Cordova. Private property is rare in Prince William Sound as the majority of the land is part of the Chugach National Forest

under protective status by the Federal Government. Opportunities for individuals to own land in Prince William Sound is rare. This proposed subdivision will provide Alaskans with an opportunity to own home site lots or recreational lots in an area that currently has few opportunities for settlement of any kind. The proposed subdivision will be designed in a way that will minimally impact the current recreational and harvest uses of the land. To do this the subdivision lots should be between 2 and 20 acres each in order to still provide for public use of the state owned land on Hawkins Island. Lot sizes larger than this could adversely affect public access in the area and also have a greater negative impact on hunting areas. Portions of the proposed project area are to remain in public ownership; lots larger than 20 acres would make the retention of State public lands less feasible and therefore the balance of activities more difficult. In order to provide for and balance the continuation of recreation activities as well as the settlement of lands Alternative 1 is the recommended course of action for this project area.

Recommendation

The Alaska Legislature, as well as private citizens, has indicated a desire for DNR to offer for sale, accessible, quality State land for private ownership. By making this project available, DNR will provide an opportunity for Alaskans to purchase quality, accessible State land. Offering the proposed Hawkins Island Alaska Subdivision, as presented in Alternative 1, is the preferred alternative.

The proposed actions are consistent with the overall management intent for State land and are in the State's best interest. The land was designated as future settlement area by the Prince William Sound Area Plan. By offering the proposed project area at a sealed bid auction and closing these parcels to mineral entry, the State will provide Alaskans with the opportunity for private ownership of land and will generate revenue for the State. It is recommended that the disposal of the proposed project area be approved, surveyed, and offered at public sealed bid auction.

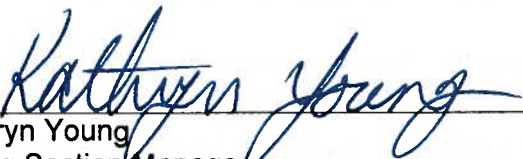


Jason Walsh
Natural Resource Specialist II
Subdivision Sales Program
Land Sales & Contract Administration Section

10/30/08
Date

Best Interest Finding

I find that the proposed actions are consistent with the overall management intent for State land and the actions are in the State's best interest, as it satisfies a demand for accessible, quality land for private ownership. The proposed actions are also consistent with the Prince William Sound Area Plan and will generate revenue for the State. This decision is hereby approved to proceed to Public Notice in accordance with AS 38.05.945.



Kathryn Young
Acting Section Manager
Lands Sales and Contract Administration
Division of Mining Land and Water
Department of Natural Resources

Oct 30, 2008
Date

Attachment A

Public Notice

Pursuant to AS 38.05.945, the public is invited to comment on this Preliminary Finding and Decision, which proposes to survey and sell lands within the Hawkins Island Alaska Subdivision project area, as well as the proposed mineral closing area. Legal notices will be published in Anchorage Daily News and The Cordova Times. Public notices will also be posted at local post offices in the general vicinity of the proposed area. Notices will be mailed to affected boroughs, Native Corporations, Tribal Councils and Villages. The notice will also be posted on the State of Alaska Public Notice web page at <http://notes3.state.ak.us/pn/pubnotic.nsf>.

Pursuant to AS 38.05.946, a municipality or corporation entitled to receive notice under AS 38.05.945 may hold a hearing within 30 days after receipt of the notice. If a hearing is held, the commissioner (or a representative) shall attend the hearing. The commissioner has discretion to hold a public hearing.

The Alaska Department of Natural Resources, Division of Mining, Land, and Water (DNR/DMLW) proposes to survey and offer for sale State land totaling approximately 326.75 acres. The proposed Hawkins Island Subdivision will consist of up to 30 surveyed parcels varying in size. The parcels will be offered for sale at public sealed bid auction.

The proposed Hawkins Island Subdivision is located on Hawkins Island, a large island more than 45,000 acres in size, located in eastern Prince William Sound. The Island lies due west from the town of Cordova. The project area that will include the proposed subdivision and land sale is located on the northeastern corner of Hawkins Island.

Legal Description: Copper River Meridian Township 15 South Range 03 West, Sec 8: Gov't Lot 4; Sec 17: Gov't Lots 1, 2, 3 and 7; Sec 20: Gov't Lot 1.

The public is invited to comment on the Preliminary Finding and Decision to sell the project area commonly known as Hawkins Island Subdivision or on the proposed actions. Copies of the Preliminary Finding and Decision are available at the DNR/DMLW, Land Sales and Contract Administration Unit, 550 W. 7th Ave., Suite 640, Anchorage, AK 99501. Copies are also available at the department's Public Information Offices in Juneau, Anchorage, and Fairbanks or at www.dnr.state.ak.us/mlw/landsale/.

Comments must be received in writing and can be sent to the above mailing address or by email to jason.walsh@alaska.gov or by fax to 906-269-8916. All comments must be received on or before **5:00pm December 1, 2008** to ensure consideration.

To be eligible to appeal the final decision, a person must comment during the comment period. A copy of the final decision will be sent to any person who comments on the Preliminary Finding and Decision, and will explain the appeal process.

For additional information regarding project development and timeline contact Jason Walsh at (907) 269-8544, fax (907) 269-8916, or email to jason.walsh@alaska.gov.

If public comments in response to this notice indicate the need for significant changes in the above decision, additional public notice for the proposed area will be given. DNR reserves the right to modify the number of proposed parcels from this offering at any time. Deleting parcels from the final offering will not be considered a significant change to this decision. If no significant change is required, the Preliminary Finding and Decision, including any deletions, minor changes and a summary of public comments, will be issued as the Final Finding and Decision of the Department of Natural Resources without further notice. A copy of the final decision will be sent to any person who comments on the proposed decision and will be available at the above address. The Final Decision will set out the applicable process for appealing the decision under AS 38.05.035(i)-(m). To be eligible to appeal, a person must comment during the public comment period.

Individuals with disabilities who may need auxiliary aids, services or special modifications should contact the Public Information Center in Anchorage, between 10:00 a.m. and 5:00 p.m. Monday through Friday, at (907) 269-8400, or email: pic@dnr.state.ak.us or TDD (907) 269-8411, or the Public Information Office in Fairbanks, between 10:00 a.m. and 5:00 p.m. Monday through Friday, at (907) 451-2705, email: fbx_pic@dnr.state.ak.us

Attachment B

Southcentral Region: Proposed Subdivision Project

Hawkins Island

15S03W CRM, Portions of Section 8, Section 17 and Section 20
Please see PD for complete legal description of project area.



0 0.5 1 2 Miles

Settlement Designation

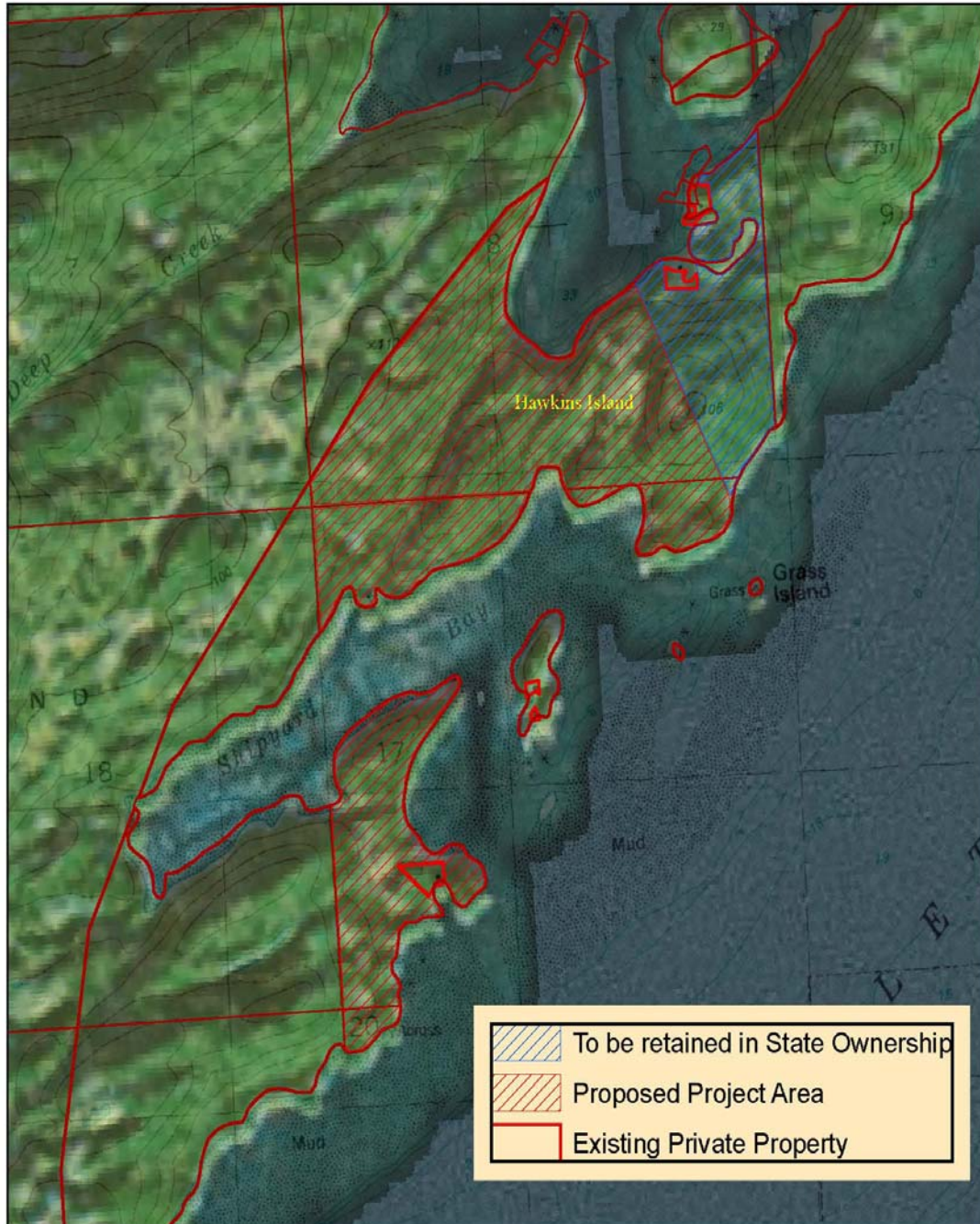


Attachment C

Southcentral Region: Proposed Subdivision Project

Hawkins Island

Copper River Meridian 15 South 03 West
Section 8, Lot 4; Section 17, Lots 1, 3, 4 and 7; Section 20, Lot 1



0 0.2 0.4 0.8 Miles



This map provides a graphic representation of land status, topography and boundaries. This map may not be used for legal representation of property boundaries or other land status. This map is not meant for navigational purposes. Source documents remain the official record. For further explanation of the map please see the Hawkins Island Preliminary Decision.

